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SENATE BILL 179

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Cisco McSorley

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO ELECTIONS; ESTABLISHING RANDOM VOTING SYSTEM CHECK PROCEDURES; REQUIRING HAND RECOUNTS OF PAPER BALLOTS TO CHECK THE ACCURACY OF ELECTRONIC VOTE TABULATOR SYSTEMS; CREATING AN ELECTION COMMISSION; PRESCRIBING POWERS AND DUTIES; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Election Code is enacted to read:

"[NEW MATERIAL] ELECTION COMMISSION--MEMBERSHIP--DUTIES.--

A. The "election commission" is created and is administratively attached to the office of the secretary of state. The commission is composed of the following members:

(1) the director of the bureau of elections, who shall serve as chair of the commission;

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1 (2) the attorney general or the attorney
2 general's designee;

3 (3) the state auditor or the state auditor's
4 designee; and

5 (4) three public members appointed by the
6 governor and confirmed by the senate, one of whom is an expert
7 in statistics and two of whom represent different nonpartisan
8 voter information or voter education organizations.

9 B. Public members shall serve for terms of four
10 years, beginning January 1, 2008, and may be removed by the
11 governor only for malfeasance, misfeasance or neglect of duty.
12 Vacancies shall be filled by appointment of the governor for
13 the remainder of the unexpired term.

14 C. The election commission shall meet as often as
15 it deems necessary on the call of the chair or any three
16 members of the commission. Actions of the commission shall be
17 by majority vote of the members of the commission.

18 D. The secretary of state shall provide the
19 commission with staff, record-keeping and related
20 administrative and clerical assistance as necessary.

21 E. Public members of the commission are entitled to
22 receive per diem and mileage pursuant to the Per Diem and
23 Mileage Act and shall receive no other compensation, perquisite
24 or allowance."

25 Section 2. A new section of the Election Code is enacted

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1 to read:

2 "[NEW MATERIAL] ELECTION COMMISSION--POWERS--DUTIES.--

3 A. The election commission shall:

4 (1) promulgate rules necessary for carrying
5 out random voting system checks in accordance with provisions
6 of the Election Code;

7 (2) oversee random voting system checks
8 following general elections in accordance with the provisions
9 of Sections 3 and 4 of this 2007 act; and

10 (3) establish standards and procedures to
11 ensure the reliability and integrity of random voting system
12 checks.

13 B. The election commission may:

14 (1) request expert technical advice from
15 federal and state agencies; and

16 (2) contract with public or private
17 universities for statistical analyses and other technical
18 services."

19 Section 3. A new section of the Election Code is enacted
20 to read:

21 "[NEW MATERIAL] POST-ELECTION DUTIES--RANDOM VOTING SYSTEM
22 CHECK.--

23 A. Following a general election, the election
24 commission shall oversee a random voting system check of
25 precinct electronic vote tabulators, alternate voting location

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1 electronic vote tabulators and absent voter precinct electronic
2 vote tabulators. The election commission shall select in a
3 public drawing a random sample of precinct electronic vote
4 tabulators, alternate voting location electronic vote
5 tabulators and a proportionate number of absentee ballots from
6 absent voter precincts as soon as practicable after the
7 completion of the county canvasses. The size of the random
8 sample shall be determined so that it will ensure, with at
9 least a ninety percent probability for statewide races, that
10 faulty tabulators would be detected if they would change the
11 outcome of the election for a selected office.

12 B. The election commission shall request the state
13 canvassing board to direct the appropriate county clerks to
14 compare the vote totals for candidates for selected offices
15 from the randomly selected precinct level and alternate voting
16 location electronic vote tabulators with the respective vote
17 totals of a hand recount of the paper ballots counted by those
18 electronic vote tabulators in accordance with election
19 commission rules. In addition, the election commission shall
20 request the state canvassing board to direct the county clerks
21 to compare the vote totals for the selected candidates from a
22 hand recount of a proportionate number of paper ballots from
23 the randomly selected absent voter precincts with an electronic
24 vote tabulator recount of those ballots in accordance with
25 election commission rules.

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1 C. For the purposes of this section, "selected
2 offices" means the offices of governor or president, the
3 statewide elective office for which the winning candidate won
4 by the narrowest margin of all candidates for statewide
5 elective office and the federal elective office for which the
6 winning candidate won by the narrowest margin of all federal
7 candidates for federal office in New Mexico.

8 D. In its request to the state canvassing board for
9 a random voting system check, the election commission shall
10 specify the precincts where the selected precinct electronic
11 vote tabulators are to be checked and which absent voter
12 precincts and alternate voting locations are to be included in
13 the random voting system check.

14 E. If the total votes for each candidate from the
15 hand counts and the electronic vote tabulator counts are the
16 same, or the election commission determines that the
17 differences indicate that there is a less than ten percent
18 chance that the winning candidate would change as a result of a
19 recount, the county canvass shall be confirmed as the official
20 vote tally if the county canvass is not otherwise amended or
21 challenged pursuant to the provisions of the Election Code.

22 F. If the total votes for a candidate from the hand
23 counts and the electronic vote tabulator counts differ, the
24 election commission shall determine the reason for the
25 difference. If the difference is due to fraud or electronic

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1 vote tabulator error, the election commission shall determine
2 if further sampling and hand recounts need to be conducted in a
3 given county or statewide to determine the accuracy of the
4 county canvasses.

5 G. A full recount for a race shall be conducted if
6 the election commission finds after the initial voting system
7 check or upon further sampling and hand recounts that there is
8 at least a ten percent chance that the winning candidate would
9 change as a result of the recount. The state shall pay for the
10 costs of the recount.

11 H. An electronic vote tabulator that is found to
12 have been in error shall not be used in an election again until
13 the reason for the error is identified and corrected and the
14 electronic vote tabulator has been recertified."

15 Section 4. A new section of the Election Code is enacted
16 to read:

17 "[NEW MATERIAL] POST-ELECTION DUTIES--RANDOM VOTING SYSTEM
18 CHECK--RECOUNT PROCEEDINGS--COSTS.--

19 A. The election commission shall file with the
20 state canvassing board a request for a random voting system
21 check after each general election.

22 B. Immediately after filing of the request for a
23 random voting system check, the state canvassing board shall
24 issue a summons directed to the precinct board of each precinct
25 specified in the request commanding it to appear at the county

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1 seat of the county where the precinct is situated on a day
2 fixed in the summons, which date shall not be more than five
3 days after the filing of the application for a random voting
4 system check. The summons shall be forwarded to the county
5 clerk of the concerned county.

6 C. Upon receipt of the summons, the county clerk
7 shall deliver it to the county sheriff, who shall forthwith
8 personally serve it upon each of the precinct board members.
9 The county clerk shall thereupon send notices by registered
10 mail of the date fixed for the random voting system check to
11 the district judge for the county and to the county chair of
12 each of the political parties that participated in the election
13 in that precinct.

14 D. The precinct boards, district judge or the
15 district judge's designee and the county clerk shall meet at
16 the county courthouse at 10:00 a.m. on the date fixed for the
17 random voting system check and the ballot boxes and electronic
18 vote tabulators of the precincts involved in the random voting
19 system check shall be opened. The precinct boards shall
20 recount by hand the paper ballots from the selected precinct or
21 alternate voting site electronic vote tabulators, or the
22 absentee ballots, as the case may be, for the office in
23 question in the presence of the county clerk, the district
24 judge, or the district judge's designee, and the county canvass
25 observers for that election who may desire to be present. The

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1 precinct board shall compare the vote totals for candidates for
2 the selected offices from the selected precinct electronic vote
3 tabulators and alternate voting site tabulators with the
4 respective vote totals of a hand recount of the paper ballots
5 counted by those electronic vote tabulators in accordance with
6 procedures established by the election commission. An absent
7 voter precinct board shall compare the vote totals from a hand
8 recount of the selected number of absentee ballots for
9 candidates for the selected offices with an electronic vote
10 tabulator recount of those ballots in accordance with
11 procedures established by the election commission. The
12 precinct board shall note and explain any discrepancies between
13 the hand recount and the electronic vote tabulator count of the
14 ballots.

15 E. During the random voting system check, the
16 precinct board of a precinct where paper ballots or absentee
17 ballots are being recounted shall recount only the ballots that
18 the presiding judge accepted and placed in the ballot box as
19 legal ballots at the time they were cast or received, as the
20 case may be, and that were counted by electronic vote
21 tabulators.

22 F. After completion of the random voting system
23 check, the precinct board shall replace paper ballots or
24 absentee ballots in the ballot box and lock it, the electronic
25 vote tabulators shall be locked and resealed and the precinct

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1 board shall certify to the election commission the results of
2 the random voting system check. The district judge, or the
3 district judge's designee, and the county clerk shall also
4 certify that the random voting system check was made in their
5 presence.

6 G. All costs for a random voting system check shall
7 be paid by the state."

8 Section 5. REPEAL.--Section 1-14-13.1 NMSA 1978 (being
9 Laws 2005, Chapter 270, Section 75) is repealed.

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